IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1248 OF 2006

Mirabai Martandrao Sansare,
Age 40 years, residing at
Mahatma Phule Wadi Hutment,
Room No.339, Behind Ambika Stores,
Corba Mitaghar, Wadala (East),
Mumbai – 400 037. ..Petitioner

Versus

1. The State of Maharashtra,
   Through the Commissioner of
   Police, Brihan Mumbai,
   C/0.Dy.Commissioner of Police
   (Preventive) Crime Branch,
   3rd Floor, Shivaji Market, M.R.A. Marg,
   Mumbai – 400 001.

2. The Secretary,
   Government of Maharashtra,
   (Preventive Detention),
   Home Department (Special),
   Mantralaya, Mumbai – 400 032 ..Respondents.

CORAM :- B.H.MARLAPALLE &
NARESH H.PATIL, JJ.
DATE :- 13th OCTOBER,2006.

ORAL JUDGMENT (PER : N.H.PATIL,J.)

1.? In this Petition under Article 226 of the Constitution of India, the Petitioner-detenu challenges the order of detention dated 22nd September,2005 passed by the Commissioner of Police, Brihan Mumbai in exercise of the powers conferred upon him under sub section 2 of

Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act,1981 (for short MPDA Act).

2. The Petitioner is the mother of the detenu Manoj Sansare. The detenu filed a representation to the Government for setting aside the detention order. The Home Department of State of Maharashtra rejected the representation of the detenu vide order dated 7th November,2005. The Secretary, Government of Maharashtra confirmed the detention order issued by the Commissioner of Police on 7th November,2005. In the detention order, the Commissioner of Police states that the detenu was weapon wielding dangerous person of violent nature having criminal antecedents. The detenu was at the relevant time a Municipal Corporator of Mumbai Municipal Corporation, Ward No.42. The charge against the detenu is that his criminal activities are spread over within the locality of Korba Mithagar, Nanabhai Wadi, Karim Wadi, Ganesh Nagar, Shivshankar Nagar, Wadala (East) and the area adjacent thereto coming under the Wadala Police Station in the Brihan Mumbai. The activities of the detenu have caused a panic and fear in the minds of people of the said locality and have caused threat and danger to the life and the property of the people residing in the said locality, while carrying out their daily

activities. It is further stated that the detenu, along with his associates was moving around with arms and dangerous weapons such as revolver, rampuri knife and sura in the above localities and did not hesitate to use the said weapons while committing the offences of assault, extortion and criminal intimidation. The activities of the detenu has terrorized the people and the detenu and his associates have caused panic and fear in the minds of the people residing in the said localities.

3. The order further states that in the year 2002, in order to curtail the activities of detenu, the proceeding under Section 110(e)(g) of the Criminal Procedure Code was initiated against the detenu but the same was revoked by the Special Executive Magistrate, Wadala, Brihan Mumbai. One Mr.Ramakant Pande had filed a complaint against the detenu, who happens to be a Principal of Bansidhar Agarwal Model School and Junior College, Wadala, Mumbai. It is stated that one month prior to 5th July,2005, the associate of the detenu Narendra Basant Singh and Sayyed Ali Khan, along with 2-3 unknown persons approached the Complainant Ramakant Pande for admission of ward of Sayyed Ali Khan and Others. The associates of the detenu pressurized the complainant for getting the admission of the son of Sayyed Ali Khan by quoting the name of the detenu. The complainant Ramakant Pande received phone calls

from the Narendra Basant Singh, the associate of the detenu, who informed that the detenu and Narendra Singh want to meet the complainant. Accordingly, the detenu and Narendra Singh went to the office of the Principal, along with Sayed Ali Khan and 10 to 15 others including men and women. The Principal was threatened by the detenu and the associates with the dire consequences, if the admission to the Ward of Sayyed Ali Khan was not given. Filthy language was used by the detenu and the associates on receiving answer from the Principal and the Principal was threatened by saying that "rqe pksj gks] rqedks ; gkWa cSBus ugh nsaxs] rqe vWzMfe'Au dSls ugh nsrs] rqedks ekjsaxs] gkrikWao rksM nsaxs^^ Thereafter the incident was informed to the Police. The detenu and his associates were taken out of the office of the Complainant.

4. C.R.No.189 of 2005 came to be registered under Section 143,145,147,149323,341,452,504,506(ii),34 of the Indian Penal Code against the detenu and his associates at R.A.K.Marg Police Station. During the investigation, the offences punishable under Section 354 and 509 of the Indian Penal Code were added. On 2nd September,2005, the detenu was arrested in the case and on 3rd September,2005 Narendra Singh was arrested.

5. On 22nd August,2005 at about 22.00 hrs., the detenu and his associates Bala Tukaram Garmukhe, Bala Shetty and Bhagwan Bhaurao Sable dismantled Chinese stall of MR.Nagsen Kadam and forced him to close the business. The detenu threatened him with dire consequences, if he starts the Chinese stall again. In this regard on 23rd August,2005, the complainant made an application against the detenu and his associates at Wadala Police Station. On 25th August,2005 on the complaint of one Mr.Anil Laxman Kadam, C.R.No.90 of 2005 came to be registered against the detenu and his associates Rajesh Martandrao Sansare and others under Section 143,147,148,149,324,307,353 read with 34 of the Indian Penal Code. The Police made confidential inquiries with regard to the criminal activities in the said localities. Two in-camera statements of witnesses were recorded. On going through the proposal of the Senior Police Inspector, Wadala Police Station and verification of in-camera statements done by the Divisional Assistant Commissioner of Police, the Commissioner of Police passed an order of detention.

6. The statements of witness-"A" was recorded on 26th August,2005, in which he stated that he was doing business in Dinbandhu Nagar. It is alleged that the detenu was a Corporator of Ward No.42 and

extorted Hafta at the point of deadly weapons like revolver and other dangerous weapons. The witness has narrated the details of extortion and the threats given by the detenu and his associates, which are reflected from the order of Commissioner.

7. In-camera statement of witness-"B" was recorded on 27th August,2005, in which he stated that he was running business in Ganesh Nagar area. The said witness has stated that the detenu and his associates extorted money at the point of revolver and other dangerous weapons in the said area.

8. The Commissioner arrived at his subjective satisfaction regarding the activities, in which the detenu was involved and resolved that the detenu was dangerous person, whose activities required to be curtailed for maintaining public order. Hence, keeping in view the material placed on record, the order of detention was passed.

9. The Commissioner of Police, Brihan Mumbai filed affidavit-in-reply along with affidavit of Assistant Police Inspector of Wadala Police Station. They have supported the initiation of proceedings and the detention order passed against the detenu. The detenu has raised few

grounds against the detention order. While arguing the matter, the learned Counsel appearing for the detenu placed emphasize on the ground that the Commissioner of Police had placed much reliance on the proceedings in C.R.No.89 of 2005, of Wadala police Station but except the said F.I.R., the Commissioner did not peruse the other material with regard to C.R.No.90 of 2005 nor copies were supplied to the detenu. The in-camera statements of two witness would show that there was no necessity to pass the detention order, as incidents narrated by these witnesses could not disturb the public order assuming the said to be true. The learned Counsel for the detenu further submitted that there was no confidential inquiry undertaken by the independent agency regarding verification of the in-camera statements.

10. Perusal of the affidavit in reply of the Commissioner of Police, Brihan Mumbai reflects that the grounds of challenge raised by the detenu are properly met. It is stated in paragraph No.10 of the reply that the detenu was furnished with all the documents, statements of witnesses referred and relied upon by the Commissioner. It is stated that the signature of the detenu was obtained as acknowledgment on each and every page of the compilation. Reliance was placed by the commissioner on the proceedings of C.R.No.189 of 2005. It is stated that it was not

necessary for the Commissioner to peruse the papers of C.R.No.191 of 2005, which was registered on the complaint of detenu for the offence punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. We do find sufficient force in the stand taken by the Commissioner of Police in this regard.

11. It was categorically submitted by the Commissioner that he did not place reliance on C.R.No.190 of 2005, which was registered on the complaint of Smt.Nagma Khurshid Khan, therefore, the investigation papers of the said crime were not perused by him. Considering the submissions advanced by the learned Counsel appearing for the parties, we do not find that the detention order passed by the Commissioner was without considering the material placed before him and after reaching his subjective satisfaction of the case. We are satisfied that the activities of the detenu were of such a nature that it had disturbed the public order. The activities of the detenu were dangerous in nature and the Commissioner of Police did not place reliance on the past incidents oe antecedents for passing detention order and the same were referred in the impugned order passed by the Commissioner of Police by way of reference. The crime bearing C.R.No.189 of 2005 came to be registered against the detenu and two in-camera statements were recorded and on the

basis of the same, the detention order is passed. The Commissioner of Police denied the grounds raised by the Petitioner that he did not ascertain the truthfulness of the in-camera statements before issuing the detention order.

12. Considering the reply filed by the Commissioner in paragraph No.17, we do not find that there was any unreasonable or abnormal delay in deciding the representation filed by the detenu. We do not find that the procedure adopted by the authorities concerned in considering the representation was erroneous and faulty in nature. This Court, therefore, finds that the detenu has failed to make out a case for causing interference in the detention order. We do not find that there was no sufficient material before the authorities concerned to pass the impugned order of detention.

13. Considering the grounds stated above, we are satisfied that no case is made out by the detenu for causing interference in the detention order. The challenge to the detention order fails. The Petition stands dismissed. Rule discharged.

(N\ARESH H.PATIL,J.) (B.H.MARLAPALLE,J.)